

MIAMI OIL PRODUCERS, INC.

IBLA 90-99

Decided March 23, 1993

Appeal from a decision of the Minerals Management Service assessing late payment charges. MMS-89-0059-O&G.

Affirmed.

1. Oil and Gas Leases: Royalties: Interest

MMS properly requires the holder of a Federal onshore oil and gas lease to pay interest on late royalty payments made for a royalty obligation that arose prior to the enactment of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701-1757 (1988).

APPEARANCES: M. Julia Hook, Esq., Denver, Colorado, for appellant; Howard W. Chalker, Esq., Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Miami Oil Producers, Inc. (Miami), has appealed from a decision of the Assistant Director for Program Review, Minerals Management Service (MMS), dated September 14, 1989, denying an appeal from a January 25, 1989, decision by the Chief, Office of State and Tribal Program Support, Royalty Compliance Division, MMS, that assessed late payment charges in the amount of \$378.52. The January 1989 decision notified Miami that it owed \$378.52 in late payment charges and required payment of that amount, pursuant to 30 CFR 218.54 and 218.102. It was stated that this assessment was interest accrued on the January 5, 1984, payment of royalty for oil and gas produced from onshore lease No. 053-015653-A from February through May 1981. Miami appealed to the Director from the January 1989 MMS decision.

Before the Assistant Director, MMS, Miami contended that MMS lacked the statutory, regulatory, and contractual authority to require payment of interest. Miami argued that under the Debt Collection Act of 1982, 31 U.S.C. § 3717(g)(2) (1988) "the interest and penalty section of [the statute] is inapplicable to [the lease at issue]" because that lease was issued prior to the date of enactment of the Debt Collection Act,

October 25, 1982. Recognizing that 30 CFR 218.102 authorized MMS to collect late payment charges, Miami concluded that none of the statutes cited as authority for the promulgation of that regulation provided authority for collection of late payment charges and concluded the regulation was a nullity. Finally, Miami argued that MMS lacked the contractual authority to require submission of late payment charges where no provision for collection of such charges appeared in the subject lease.

The September 1989 decision here under review denied the appeal from the January 1989 MMS decision, finding that MMS had authority to require submission of late payment charges pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. §§ 1701-1757 (1988), and 30 CFR 218.54 and 218.102. Even in the absence of a statute, the decision found that the Federal Government had authority to collect interest on delinquent accounts. Finally, it was stated that MMS was entitled to collect interest on the late payment of royalty apart from the provisions of Chapter 37 of Title 31 of the United States Code cited by Miami where the debt was not subject to that chapter because it arose under FOGRMA. Miami then appealed to this Board.

Before us Miami reiterates all the arguments made to the Assistant Director, MMS, and also contends that FOGRMA does not authorize the collection of interest on a debt that arose prior to January 12, 1983, as did the debt arising from the late payment of royalty made in the instant case for production from February through May 1981. Miami states that "FOGRMA does not authorize the retroactive imposition of late payment charges," but rather authorizes the imposition of such charges "prospectively only, that is, for payments which were late on or after January 12, 1983" (Statement of Reasons at 6). Therefore, in these circumstances, Miami concludes that Chapter 37 of Title 31 of the United States Code represents the "only potential statutory authority" for the imposition of late payment charges in the present case. Id.

[1] The royalty obligation that gave rise to this appeal arose prior to the enactment of FOGRMA, which provides in section 111(a), 30 U.S.C. § 1721(a) (1988), for the collection of interest on late royalty payments. The statute was enacted on January 12, 1983, well after royalties became due for February through May 1981 production, on the last day of the month following the month of production. Even before 30 CFR 218.54 and 218.102 were promulgated in 1984 and 1982 (see 49 FR 37346 (Sept. 21, 1984) and 47 FR 47776 (Oct. 27, 1982)), the Department provided regulatory authority for collection of late payment charges: the cited regulations were preceded by an interim rule, that also provided for assessment of interest for late payment of royalty. See 30 CFR 221.80 (45 FR 84764 (Dec. 23, 1980)). The interim rule was promulgated effective February 1, 1981, subsequently extended to March 30, 1981 (see 46 FR 10707 (Feb. 4, 1981)). The interim rule was then incorporated into a final rule, effective June 1, 1982, before being redesignated as 30 CFR 221.123 and eventually 30 CFR 218.102. See 47 FR 22527 (May 25, 1982). Therefore the Department had express regulatory authority for the collection of interest charges on the

late payment of royalty at all relevant times when royalty became due and owing, starting with March 31, 1981. Dugan Production Corp., 107 IBLA 91, 92 (1989).

Miami would have us declare the regulations predating passage of FOGRMA nullities because there was no statutory basis for collection of late payment charges. Nonetheless, the Board cannot declare a properly promulgated Departmental regulation invalid. See Mesa Petroleum Co., 111 IBLA 201, 203 n.2 (1989). We therefore conclude that MMS had authority under regulations extant at the time the royalty involved here became due and owing to require payment of interest. See, e.g., Mesa Petroleum Co., supra at 203-04.

Finally, in making the contention that the collection of interest charges is prohibited because it is not authorized by Chapter 37 of Title 31 of the United States Code, Miami cites 31 U.S.C. § 3717 (1988), which, although it provides that Federal agencies shall collect interest for an outstanding debt on a claim of the Federal Government, exempts a "claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982." In reliance on this language, Miami concludes that MMS was not authorized by Chapter 37 of Title 31 of the United States Code to collect interest on a claim for royalty where the underlying lease was executed before October 25, 1982, and refers us to 4 CFR 102.13(i)(2), an implementing regulation providing Federal agencies authority to assess interest "on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable authority."

In his September 1989 decision, the Assistant Director concluded that there is, in fact, statutory authority for the collection of interest in the present case. He stated that the "lease in this case is subject to the statutory provisions of FOGRMA, including the obligation to pay interest on the late payment * * * of royalty" (Decision at 2). He based this conclusion on the fact that the provisions of FOGRMA were extended by section 305 of FOGRMA, 96 Stat. 2461 (1982), to leases issued before the date of enactment of that statute. We need not resolve this question, however, because we conclude that the common law provides authority for the collection of interest on the late payment of royalties owed with respect to a Federal oil and gas lease. Billings v. United States, 232 U.S. 261, 286 (1914); Clark Oil Producing Co. v. Hodel, 667 F. Supp. 281, 292 (E.D. La. 1987); Coastal Oil & Gas Corp., 108 IBLA 62, 66 n.8 (1989). Consequently, although Chapter 37 of Title 31 of the United States Code does not provide authority for collecting interest in the present case because the subject lease was executed prior to October 25, 1982, there is authority for such collection apart from that chapter and MMS may properly act pursuant to it, in accordance with 4 CFR 102.13(i)(2).

Accordingly, we conclude that Miami was properly required to pay interest charges on late payment of royalty. See Shell Offshore Inc., 115 IBLA 205, 212 (1990). Furthermore, in the absence of any proof that

such charges do not amount to \$378.52, we hold that Miami was properly required to pay that amount.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge